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FEB 10 2003

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BZ

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8
 9 Attorneys for Defendant
 10 WALGREEN CO.

11 KAREN CRAIG and BLANE BECKWITH) Case No. 03 - 0580
 12 Plaintiffs,) (S.C.A.C. Case No. 2002077454)
 13 v.) DEFENDANT WALGREEN CO.'S
 14 WALGREEN CO., and DOES 1-50, inclusive) NOTICE AND PETITION OF
 15 Defendants.) REMOVAL OF CIVIL ACTION TO
 16) THE UNITED STATES DISTRICT
 17) COURT

18 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT
 19 OF CALIFORNIA:

20 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. Sections 1441(a) and 1446,
 21 Defendant WALGREEN CO. ("Defendant") hereby removes the above-titled action from the
 22 Superior Court of California in and for the County of Alameda to the United States District Court
 23 for the Northern District of California.

24 **Removal Jurisdiction**

25 1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332
 26 because this action involves citizens of different states and the matter in controversy exceeds the
 27 sum of \$75,000, exclusive of interest and costs. In support of this removal, Defendant makes the
 28 following showing.

1 2. Defendant is informed and believes that on or about December 31, 2002,
 2 Plaintiffs Karen Craig and Blane N. Beckwith (hereinafter collectively referred to as "Plaintiff"
 3 or "Plaintiffs") filed a Complaint in the Superior Court of the State of California in and for the
 4 County of Alameda, titled KAREN CRAIG and BLANE N. BECKWITH v. WALGREEN CO.,
 5 AND DOES 1 THROUGH 50. The Complaint purports to allege causes of action for violation
 6 of (1) the Unruh Civil Rights Act, (2) the California Public Accommodations Law, and (3) Title
 7 III of the Americans with Disabilities Act.

8 3. Service on the Defendant of the Summons and Complaint was completed on
 9 January 13, 2003. See Declaration of Theresa Mak filed concurrently herewith. This Notice of
 10 Removal is filed within 30 days of service of the Summons and Complaint on Defendant. Thus,
 11 removal is timely pursuant to 28 U.S.C. § 1446(b) and Federal Rules of Civil Procedure, Rule
 12 6(a). *See also Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354-56 (1999)
 13 (removal is timely if made within 30 days after complaint is served on defendant). All process,
 14 pleadings, notices and orders served upon Defendant in this action, including the Complaint, are
 15 attached as Exhibit "A" hereto, and are incorporated by reference as though fully set forth herein.
 16 Defendant's Answer to the Summons and Complaint is attached as Exhibit "B" hereto, and
 17 incorporated by reference as though fully set forth herein.

18 **Diversity Jurisdiction**

19 4. This is a civil action of which this Court has original jurisdiction pursuant to 28
 20 U.S.C. § 1332(a)(1), and is one which may be removed to this Court by Defendant pursuant to
 21 the provisions of 28 U.S.C. § 1441(a), in that it is a civil action wherein the amount in
 22 controversy is in excess of the sum Seventy Five Thousand Dollars (\$75,000), exclusive of
 23 interest and costs, and is between citizens of different states.

24 5. Defendant is informed and believes that Plaintiff is, and at all times since the
 25 commencement of this action has been, a citizen and resident of the State of California.

26 6. Defendant is a corporation incorporated under the laws of the State of Illinois
 27 with its principal place of business located in the State of Illinois. Pursuant to 28 U.S.C. §
 28

1 1332(c)(1), "a corporation shall be deemed to be a citizen of any State by which it has been
 2 incorporated and of the State where it has its principal place of business . . ."

3 7. The citizenship of the fictitious Defendants, Does 1 through 20, may be
 4 disregarded pursuant to 28 U.S.C. § 1441(a) ("[f]or purposes of removal under this chapter, the
 5 citizenship of Defendant sued under fictitious names shall be disregarded"). *Fristoe v. Reynolds*
 6 *Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980).

7 8. The amount in controversy in this action, exclusive of interest and costs, exceeds
 8 the sum of Seventy-Five Thousand Dollars (\$75,000). According to the Complaint, Plaintiff
 9 claims entitlement to actual, compensatory, statutory, punitive and exemplary damages as well as
 10 attorneys' fees. Complaint, p. 25, at lines 15-23. If attorneys' fees are recoverable by statute or
 11 contract, then the fees claim is included in determining the amount in controversy. *Goldberg v.*
 12 *CPC Int'l, Inc.*, 678 F.2d 1365, 1367 (9th Cir. 1982). Thus, based upon the allegations contained
 13 in the Complaint, Defendant is informed and believes that Plaintiff seeks damages within the
 14 jurisdictional authority of this Court.

15 9. Since diversity of citizenship exists between Plaintiff and Defendant and the
 16 matter in controversy between them is in excess of Seventy-Five Thousand Dollars (\$75,000),
 17 this Court has original jurisdiction of the action pursuant to 28 U.S.C. § 1332(a)(1). Moreover,
 18 counsel for both Plaintiff and Defendant engaged in a telephone conversation on January 10,
 19 2003, wherein counsel for both Plaintiff and Defendant agreed that the action constituted a suit
 20 between citizens of different states, and that the amount in controversy exceeded the sum of
 21 \$75,000. Plaintiff's counsel further stated that in the event Defendant removed the case to the
 22 United States District Court for the Northern District of California, Plaintiff's counsel would not
 23 seek remand back to the Superior Court of California. *See* Declaration of Theresa Mak served
 24 and filed concurrently herewith. The action is therefore a proper one for removal to this Court.

25 **Venue**

26 10. Venue lies in the United States District Court for the Northern District of
 27 California pursuant to 28 U.S.C. § 1441(a) because the state court action was filed in this district.
 28

1 11. The documents designated as Exhibit A to this Notice are true and correct copies
2 of all processes, pleadings, and orders served upon and received by Defendant in this case.

3 12. Defendant will give notice of the filing of this Notice of Removal to Plaintiff and
4 to the Clerk of the Superior Court of the State of California in and for the County of Alameda.
5 The Notice of Removal is concurrently being served on all parties.

6 **WHEREFORE**, Defendant prays that this civil action be removed from the Superior
7 Court of the State of California in and for the County of Alameda to this Court.

8 DATED: February 10, 2003

9 SEYFARTH SHAW

10 By _____

11 Kari Erickson Levine
12 Attorneys for Defendant
13 WALGREEN CO.

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EXHIBIT A



1 ROBERT G. SCHOCK State Bar No. 37682
2 LAW OFFICE OF ROBERT G. SCHOCK
3 1970 Broadway, Suite 1200
4 Oakland, CA 94612
5 (510) 839-7722
6 Facsimile (510) 839-7752

7 Attorney for Plaintiffs

8 KAREN CRAIG and BLANE N. BECKWITH

FILED
ALAMEDA COUNTY

DEC 3 1 2002

CLERK OF THE SUPERIOR COURT

By Shifer DEPUTY

9 CALIFORNIA SUPERIOR COURT

10 COUNTY OF ALAMEDA

11 KAREN CRAIG and BLANE N. BECKWITH,

12 CASE NO.
Civil Rights

2002077454

13 Plaintiffs,

14 vs.
15
16 WALGREEN CO., and DOES 1-50, inclusive,
17 Defendants.
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COMPLAINT FOR PRELIMINARY
AND PERMANENT INJUNCTIVE
RELIEF AND DAMAGES: DENIAL
OF CIVIL RIGHTS AND PUBLIC
FACILITIES TO PHYSICALLY
HANDICAPPED PERSONS,
(§§51,54,54.1,55 CALIFORNIA
CIVIL CODE; §19955ff
CALIFORNIA HEALTH & SAFETY
CODE);
TITLE III OF THE AMERICANS
WITH DISABILITIES ACT OF 1990

Plaintiffs KAREN CRAIG and BLANE N. BECKWITH complain of Defendants
WALGREEN CO. (hereinafter "WALGREENS") and DOES 1-50, inclusive, and allege as

follows:

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EXHIBIT A

FIRST CAUSE OF ACTION:DAMAGES FOR DENIAL OF FULL AND EQUAL
ACCESS TO A PUBLIC ACCOMMODATION

COMES NOW plaintiff KAREN CRAIG and for a First Cause of Action against defendants, and each of them, alleges as follows:

I.

Plaintiff KAREN CRAIG is a "person with disabilities, a " physically "handicapped" person, who requires use of a wheelchair for mobility. (Hereinafter, the words "physically handicapped" and "physically disabled" are used interchangeably as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §51, 52, 54.1 and 54.3 and other statutory measures refer to the protection of the rights of "individuals with disabilities."). Plaintiff KAREN CRAIG requires the use of a wheelchair for locomotion and is unable to use portions of public facilities which are not accessible to persons requiring the use of wheelchairs.

II.

Venue is proper in this court pursuant to 28 USC 1331(b) and is founded on the fact that the real property which is the subject of this action is located in Alameda County and that plaintiff's cause of action arose in this venue.

III.

Defendants WALGREENS CO. and DOES 1-50 are the owners and operators of defendant WALGREENS, located at 2187 Shattuck Avenue, City of Berkeley, Alameda County, California and 1330 Broadway, City of Oakland, Alameda County. These buildings

1 are a "public accommodation or facility" subject to the requirements of California Health &
2 Safety Code §19955 et seq. and of the California Civil Code, §54, et seq. Such facilities
3 were newly constructed after July 1, 1970, and subsequently underwent "alterations,
4 structural repairs, or additions," all subjecting such retail and drug stores to handicapped
5 access requirements per §19955 through §19959 California Health & Safety Code.

6

7 IV.

8 Defendants have failed and refused to provide proper access to aisles and goods
9 which are accessible to and usable by other persons, despite their obligations under
10 California and federal laws, including California's Civil Rights Acts and the Federal
11 Americans With Disabilities Act of 1990. As a result, plaintiff has suffered damages, and
12 seeks an injunction to require accessible facilities for disabled persons as required by law.

13

14 V.

15 Plaintiff KAREN CRAIG and other similarly situated physically disabled persons
16 requiring the use of wheelchairs are unable to use public facilities on a "full and equal"
17 basis unless such facilities are in compliance with the provisions of the Health & Safety
18 Code §19955 et seq. Plaintiff is a member of that portion of the public whose rights are
19 protected by the provisions of §19955 et seq. Health & Safety Code. The acts and
20 omissions of Defendants complained of herein were committed in the City of Berkeley and
21 City of Oakland, County of Alameda, State of California.

22

23 VI.

24 Health & Safety Code §19955 was enacted, effective July 1970, "To ensure that
25 public accommodations or facilities constructed in this state with private funds adhere to
26 the provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the

1 Government Code." Such public accommodations are defined to include retail and drug
2 stores. Health & Safety Code §19955 also requires that, "When sanitary facilities are made
3 available for the public, clients or employees in such accommodations or facilities, they
4 shall be made available for the physically handicapped." Title 24, California Administrative
5 Code, was in effect at the time of each alteration which, on information and belief, occurred
6 at such public facility since July 1, 1982, thus additionally requiring access when each such
7 "alteration, structural repair or addition" is carried out, (in addition to the §19959 Health &
8 Safety Code requirements in effect since 1970), and which imposes additional access
9 requirements with which defendants have not complied. Between July 1, 1970 and July 1,
10 1982 requirements of the American Standards Association (ASA) applied as to each such
11 alteration, structural repair or addition.

12

13

VII.

14 At all times herein relevant, defendants and each of them were the owners and
15 operators of the subject facilities. Plaintiff is informed and believes that each of the
16 Defendants herein is an agent, employee or representative of each of the other
17 Defendants, and performed all acts and omissions stated herein within the scope of such
18 agency or employment or representative capacity and is responsible in some manner for
19 the acts and omissions of the other Defendants in proximately causing the damages
20 complained of herein. Further, all such defendants have acted pursuant to a joint venture
21 and common enterprise, and share liability for the acts and omissions of their joint
22 venturers.

23

24

VIII.

25 On or about December 7, 2002 and prior to that on an almost weekly basis, plaintiff
26 KAREN CRAIG was a paying customer and guest at WALGREENS. After entering said

27

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1 premises, she attempted to access the aisles at the store to shop. Unfortunately, plaintiff
2 could not access the aisles and goods because there were obstacles in her path that had
3 been placed there by defendant WALGREENS, its agents and employees. Contrary to the
4 requirements of §19955 Health & Safety Code since 1970, WALGREENS were built and
5 altered and modified since 1970 without providing access to their aisles and products for
6 sale.

7

IX.

8
9 Plaintiff KAREN CRAIG was never able to access all the aisles that other persons
10 could. As a result of this denial of access to the aisles and the store products, plaintiff was
11 suffering physical and emotional discomfort.

12

X.

13
14 The features of WALGREENS failed to comply with access requirements in effect at
15 all times relevant to this Complaint: at the time of the construction of these facilities; at the
16 time of subsequent "alterations, structural repairs and additions" which triggered access
17 per §19959 Health & Safety Code, and pursuant to Title 24 of the California Code of
18 Regulations; on the plaintiff's visits on December 7, 2002 and prior to that on an almost
19 weekly basis, and up to the time of filing of this Complaint, all according to proof. On
20 information and belief, other portions of these facilities and its premises also failed and
21 continue to fail to provide legally required access to disabled persons who use
22 wheelchairs, (hereinafter also "non-ambulatory" disabled persons), including but not limited
23 to the height of the service counters.

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1 XI.

2 As a result of the denial of full and equal access to the facilities of WALGREENS
3 due to the acts and omissions of defendants, and each of them, in building, owning,
4 altering, maintaining and operating the subject facilities, plaintiff suffered a violation of her
5 Civil Rights on the aforementioned dates, including but not limited to rights under §54.1
6 Civil Code, and suffered physical discomfort and pain, mental and emotional shock,
7 emotional distress, embarrassment and humiliation, all to his damage as hereinafter
8 stated. Defendants' actions and omissions to act constituted discrimination against plaintiff
9 on the sole basis that she was physically disabled and unable, because of the architectural
10 barriers created by the defendants in violation of the subject laws, to use the aisles to
11 visualize and purchase items at WALGREENS on a full and equal basis as other persons.

12 XII.

13 As a result of Defendants' acts and omissions in this regard, plaintiff has been
14 required to incur legal expenses and attorney fees, as provided by statute, in order to
15 enforce her rights and to enforce provisions of the law protecting access for disabled
16 persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks
17 damages in this lawsuit for recovery of all reasonable attorney fees, pursuant to the
18 provisions of §54.3 Civil Code. Additionally, plaintiff's lawsuit is intended not only to obtain
19 compensation for damages to plaintiff, but also to force defendants to make their facilities
20 "accessible to" and "usable by" all disabled members of the public, justifying "public
21 interest" attorney fees pursuant to the provisions of §1021.5 Code of Civil Procedure.
22

23 XIII.

24 On information and belief, the acts and omissions of defendants are further
25 evidenced by their failure to provide an accessible despite knowledge of this problem and,
26

1 on information and belief, despite prior complaints about this problem. Defendants'
2 refusals to provide a handicapped accessible, so that these facilities could properly be
3 used by disabled persons, indicate implied malice toward plaintiff and despicable conduct
4 carried on by defendants with a willful and conscious disregard for the rights and safety of
5 plaintiff and of other disabled persons, and justify exemplary damages pursuant to §3294
6 Civil Code, in an amount sufficient to make an example of defendants and to punish
7 defendants.

8 Wherefore plaintiff prays for damages as hereinafter set forth:

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SECOND CAUSE OF ACTION
VIOLATIONS OF Plaintiff'S CIVIL RIGHTS (§51 Civil Code)

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Plaintiff repleads and incorporates by reference, as if fully set forth again herein, all of the allegations contained in the First Cause of Action and incorporates them herein as if separately replied.

I.

Defendants' acts and omissions have denied plaintiff full and equal accommodations, advantages, facilities, privileges and services in a business establishment as prohibited by Civil Code §51.

II.

Each violation of the standards of Title III of the Americans With Disabilities Act of 1990 after January 1, 1993, as described in more detail in the paragraphs of the Fourth Cause of Action herein, *infra*, which are incorporated herein into this paragraph, also constitutes a violation of §51 Civil Code.

111

On information and belief, at all times relevant herein after January 1, 1993, it was
"readily achievable" under the standards of Title III (Public Accommodations) of the "ADA"
standards incorporated into the requirements of California Civil Code §51, for defendants
and each of them to have removed the access barriers complained of sufficiently to allow
full and equal enjoyment of the goods, services, facilities, and accommodations of this
public facility. Defendants have at all times herein mentioned been in violation of the
standards of §§301 and 302, 42 USC §12182 of the ADA, and in violation of California Civil
Code §51 which incorporates any violation of Title III of the ADA, including but not limited
to §302(b)(2)(a)(iv) and (v), and related ADA and "ADAAG" regulations, into the
requirements of and as a violation of California law, including Civil Code §51.

IV

13 As a result of the violation of plaintiff's Civil Rights as hereinabove described,
14 plaintiff has suffered general damages, emotional distress and incurred reasonable
15 attorney's fees according to proof, all to his damage, and is entitled to the remedies of Civil
16 Code §§52 and 55.

THIRD CAUSE OF ACTION

THIRD CAUSE OF ACTION
INJUNCTIVE RELIEF - VIOLATION OF HEALTH & SAFETY CODE §19953 and CIVIL CODE §55

21 Comes now plaintiff KAREN CRAIG and for a Third Cause of Action against
22 defendants, and each of them, for damages for a violation of Civil Rights and for
23 injunctive relief alleges as follows:

I.

1 Plaintiff hereby repleads the entirety of the First and Second Causes of Action and
2 incorporates them herein by reference as if separately replied.

II.

3 The acts and omissions of defendants as complained of herein are continuing on a
4 day by day basis to have the effect of wrongfully and wilfully excluding plaintiff and other
5 members of the public who are physically handicapped wheelchair users from full and
6 equal access to the facilities known as WALGREENS. Such acts and omissions are the
7 cause of humiliation and mental and emotional suffering of plaintiff in that these actions
8 continue to treat plaintiff as an inferior and second class citizen and serve to discriminate
9 against her on the sole basis that she is a person with disabilities and requires the use of a
10 wheelchair for movement in public places. So long as such acts and omissions of
11 defendants continue, plaintiff is unable to achieve equal access to and use of these
12 facilities. The acts of defendants have proximately caused and will continue to cause
13 irreparable injury to plaintiff if not enjoined by this court.

III.

14 Wherefore plaintiff asks this court to preliminarily and permanently enjoin the
15 continuing refusal by defendants to grant such access to plaintiff and to require defendants
16 to comply forthwith with the applicable statutory requirements relating to access for the
17 handicapped. Such injunctive relief is provided by §19953 Health & Safety Code and
18 California Civil Code §55. Plaintiff further requests that the court award statutory costs and
19 attorney fees to plaintiff pursuant to Health & Safety Code §19953 and Civil Code §55, all
20 as hereinafter prayed for.

21 Wherefore Plaintiff prays for damages as hereinafter set forth.

FOURTH CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990, 42 USC §12101FF

1

Plaintiff hereby repleads the entirety of the First, Second, and Third Causes of Action, and incorporates them herein by reference as if separately replied.

11

8 Pursuant to law, in 1990 the United States Congress made findings per 42 USC
9 §12101 regarding physically disabled persons, finding that laws were needed to more fully
10 protect "some 43 million Americans with one or more physical or mental disabilities; that
11 historically society has tended to isolate and segregate individuals with disabilities", and
12 that "such forms of discrimination against individuals with disabilities continue to be a
13 serious and pervasive social problem; that the nation's proper goals regarding individuals
14 with disabilities are to assure equality of opportunity, full participation, independent living
15 and economic self sufficiency for such individuals; and that the continuing existence of
16 unfair and unnecessary discrimination and prejudice denies people with disabilities the
17 opportunity to compete on an equal basis and to pursue those opportunities for which our
18 free society is justifiably famous."

III.

21 Congress stated as its purpose in passing the Americans with Disabilities Act (42
22 USC §12101(b))

24 It is the purpose of this act
25 (1) to provide a clear and comprehensive national mandate for the elimination
26 of discrimination against individuals with disabilities; (2) to provide clear,
strong, consistent, enforceable standards addressing discrimination against
individuals with disabilities; (3) to ensure that the Federal government plays a

1 central role in enforcing the standards established in this act on behalf of
2 individuals with disabilities; and (4) to invoke the sweep of Congressional
3 authority, including the power to enforce the 14th Amendment and to regulate
commerce, in order to address the major areas of discrimination faced day to
4 day by people with disabilities.

5

IV.

6 As part of the Americans with Disabilities Act, Public Law 101-336, (hereinafter the
7 "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by
8 Private Entities" (42 USC 12181ff). Among the public accommodations identified for
9 purposes of this title was "a retail and drug store."

10

11

V.

12 Pursuant to §302, 42 USC §12182, "No individual shall be discriminated against on
13 the basis of disability in the full and equal enjoyment of the goods, services, facilities,
14 privileges, advantages, or accommodations of any place of public accommodation by any
15 person who owns, leases, (or leases to), or operates a place of public accommodation."

16

17

VI.

18 Among the specific prohibitions against discrimination were included, in
19 §302(b)(2)(a)(iv), "A failure to remove architectural barriers, and communication barriers
20 that are structural in nature, in existing facilities... where such removal is readily
21 achievable;" and (v) "where an entity can demonstrate that the removal of a barrier under
22 clause (iv) is not readily achievable, a failure to make such goods, services, facilities,
23 privileges, advantages, or accommodations available through alternative methods if such
24 methods are readily achievable." The acts of Defendants set forth herein were a violation
25 of Plaintiff's rights under the "ADA", Public Law 101-336, and the regulations promulgated
26 thereunder, 28 CFR Part 36ff.

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-11-

28

COMPLAINT

1 VII.

2 The removal of each of the barriers complained of by plaintiff KAREN CRAIG as
3 hereinabove alleged were at all times since December 7, 2002 "readily achievable". On
4 information and belief, removal of each of the barriers to access complained of herein,
5 including access to the aisles and goods were "readily achievable" for defendants in light of
6 their financial resources, and the resources of each "parent company" owner or operator,
7 pursuant to the Americans With Disabilities Act of 1990 (ADA) and to the regulations
8 promulgated pursuant to the ADA.

9

10 VIII.

11 Per, §301(9), 42 USC 12181, "The term 'readily achievable' means easily
12 accomplishable and able to be carried out without much difficulty or expense." Plaintiff
13 alleges that removal of each of the access barriers plaintiff has complained about
14 hereinabove would have been and continues to be "readily achievable" by the defendants
15 under the standards set forth under §301(9) of the Americans with Disabilities Act. Further,
16 (per §302(b)(2)(A)(v)), if it was not "readily achievable" for defendants to remove all such
17 barriers, Defendants have failed to make the required services available through
18 alternative methods, and such methods are readily achievable.

19

20 IX.

21 Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, §308, plaintiff is
22 entitled to the remedies and procedures set forth in §204(a) of the Civil Rights Act of 1964
23 42 USC 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis of
24 disability in violation of this title or has reasonable grounds for believing that she is about to
25 be subjected to discrimination in violation of §302.

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27 -12-

28

COMPLAINT

x

2 Plaintiff has returned to defendants' WALGREENS as recently as December 7, 2002
3 and has found that the barriers to full and equal access complained of hereinabove have
4 not been remedied. Per §308(a)(1) (42 USC 12188), "Nothing in this section shall require
5 a person with a disability to engage in a futile gesture if such person has actual notice that
6 a person or organization covered by this title does not intend to comply with its provisions."
7 Pursuant to this last section, plaintiff has not returned to the WALGREENS facilities since
8 December 7, 2002, but on information and belief, alleges that defendants have continued
9 to violate the law and deny the rights of plaintiff and of other disabled persons to access
10 this public accommodation. Pursuant to §308(a)(2), "In cases of violations of
11 §302(b)(2)(A)(iv)... injunctive relief shall include an order to alter facilities to make such
12 facilities readily accessible to and usable by individuals with disabilities to the extent
13 required by this title."

14

xi

16 Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act
17 of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement
18 the Americans with Disabilities Act of 1990. Further, plaintiff seeks attorney fees, and
19 litigation expenses and costs, pursuant to §505 of Title III of the ADA.

Wherefore plaintiff prays for damages as hereinafter set forth.

21

FIFTH CAUSE OF ACTION

23 COMES NOW plaintiff BLANE N. BECKWITH and for a Fifth Cause of Action
24 against defendants, and each of them, alleges as follows:

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1.

2 Plaintiff BLANE N. BECKWITH is a "person with disabilities, a "physically
3 "handicapped" person, who requires use of a wheelchair for mobility. (Hereinafter, the
4 words "physically handicapped" and "physically disabled" are used interchangeably as
5 these words have similar or identical common usage and legal meaning, but the legislative
6 scheme in Part 5.5 Health & Safety Code uses the term "physically handicapped persons"
7 and the Unruh Civil Rights Act, §51, 52, 54.1 and 54.3 and other statutory measures refer
8 to the protection of the rights of "individuals with disabilities."). Plaintiff BLANE N.
9 BECKWITH requires the use of a wheelchair for locomotion and is unable to use portions
10 of public facilities which are not accessible to persons requiring the use of wheelchairs.

11

II.

12 Venue is proper in this court pursuant to 28 USC 1331(b) and is founded on the fact
13 that the real property which is the subject of this action is located in Alameda County and
14 that plaintiff's cause of action arose in this venue.

16

III.

17 Defendants WALGREENS CO. and DOES 1-50 are the owners and operators of
18 defendant WALGREENS, located at 2187 Shattuck Avenue, City of Berkeley, Alameda
19 County, California. This building is a "public accommodation or facility" subject to the
20 requirements of California Health & Safety Code §19955 et seq. and of the California Civil
21 Code, §54, et seq. Such facility was newly constructed after July 1, 1970, and
22 subsequently underwent "alterations, structural repairs, or additions," all subjecting such
23 restaurant to handicapped access requirements per §19955 through §19959 California
24 Health & Safety Code.

26

-14-

28

COMPLAINT

IV.

Defendants have failed and refused to provide proper access to aisles and goods which are accessible to other persons, despite their obligations under California and federal laws, including California's Civil Rights Acts and the federal Americans With Disabilities Act of 1990. As a result, plaintiff has suffered damages, and seeks an injunction to require accessible facilities for disabled persons as required by law.

V.

Plaintiff BLANE N. BECKWITH and other similarly situated physically disabled persons requiring the use of wheelchairs are unable to use public facilities on a "full and equal" basis unless such facility is in compliance with the provisions of the Health & Safety Code §19955 et seq. Plaintiff is a member of that portion of the public whose rights are protected by the provisions of §19955 et seq. Health & Safety Code. The acts and omissions of Defendants complained of herein were committed in the City of Alameda, County of Alameda, State of California.

VI.

Health & Safety Code §19955 was enacted, effective July 1970, "To ensure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with §4450) of Division 5 of Title 1 of the Government Code." Such public accommodations are defined to include retail and drug stores. Health & Safety Code §19955 also requires that, "When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the physically handicapped." Title 24, California Administrative Code, was in effect at the time of each alteration which, on information and belief, occurred at such public facility since July 1, 1982, thus additionally requiring access when each such

1 "alteration, structural repair or addition" is carried out, (in addition to the §19959 Health &
2 Safety Code requirements in effect since 1970), and which imposes additional access
3 requirements with which defendants have not complied. Between July 1, 1970 and July 1,
4 1982 requirements of the American Standards Association (ASA) applied as to each such
5 alteration, structural repair or addition.

6

7 VII.

8 At all times herein relevant, defendants and each of them were the owners and
9 operators of the subject facilities. Plaintiff is informed and believes that each of the
10 Defendants herein is the agent, employee or representative of each of the other
11 Defendants, and performed all acts and omissions stated herein within the scope of such
12 agency or employment or representative capacity and is responsible in some manner for
13 the acts and omissions of the other Defendants in proximately causing the damages
14 complained of herein. Further, all such defendants have acted pursuant to a joint venture
15 and common enterprise, and share liability for the acts and omissions of their joint
16 venturers.

17

18 VIII.

19 On or about December 4, 2002 and on numerous occasions prior to that, plaintiff
20 BLANE N. BECKWITH was a paying customer and guest at WALGREENS.
21 Unfortunately, plaintiff could not access the aisles and goods because there were
22 obstacles in his path that had been placed there by defendant WALGREENS, its agents
23 and employees. Contrary to the requirements of §19955 Health & Safety Code since
24 1970, this facility was built and altered and modified since 1970 without providing access to
25 the aisles and products for sale.

26

28

1
IX.

2 Plaintiff BLANE N. BECKWITH was never able to access the aisles and goods that
3 other persons could. As a result of this denial of access to the aisles and goods, plaintiff
4 was suffering physical and emotional discomfort.

5
X.

6
7 The features of the restaurant and men's restroom failed to comply with access
8 requirements in effect at all times relevant to this Complaint: at the time of the construction
9 of this facility; at the time of subsequent "alterations, structural repairs and additions" which
10 triggered access per §19959 Health & Safety Code, and pursuant to Title 24 of the
11 California Code of Regulations during the years 1994, 1995 and 1996 and up to the time
12 of filing of this Complaint, all according to proof. On information and belief, other portions
13 of this facility and its premises also failed and continue to fail to provide legally required
14 access to disabled persons who use wheelchairs, (hereinafter also "non-ambulatory"
15 disabled persons), including but not limited to the height of the service counters.

16
XII.

17
18 As a result of the denial of full and equal access to the facilities of WALGREENS
19 due to the acts and omissions of defendants, and each of them, in building, owning,
20 altering, maintaining and operating the subject facility, plaintiff suffered a violation of his
21 Civil Rights on the aforementioned dates, including but not limited to rights under §54.1
22 Civil Code, and suffered physical discomfort and pain, mental and emotional shock,
23 emotional distress, embarrassment and humiliation, all to his damage as hereinafter
24 stated. Defendants' actions and omissions to act constituted discrimination against plaintiff
25 on the sole basis that he was physically disabled and unable, because of the architectural
26 barriers created by the defendants in violation of the subject laws, to use the aisles and to

1 visualize and purchase items at WALGREENS on a full and equal basis as other persons.
2

3 XII.

4 As a result of Defendants' acts and omissions in this regard, plaintiff has been
5 required to incur legal expenses and attorney fees, as provided by statute, in order to
6 enforce his rights and to enforce provisions of the law protecting access for disabled
7 persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks
8 damages in this lawsuit for recovery of all reasonable attorney fees, pursuant to the
9 provisions of §54.3 Civil Code. Additionally, plaintiff's lawsuit is intended not only to obtain
10 compensation for damages to plaintiff, but also to force defendants to make their facilities
11 "accessible to" and "usable by" all disabled members of the public, justifying "public
12 interest" attorney fees pursuant to the provisions of §1021.5 Code of Civil Procedure.

13 :
14 : XIII.

15 On information and belief, the acts and omissions of defendants are further
16 evidenced by their failure to provide accessible aisles despite knowledge of this problem
17 and, on information and belief, despite prior complaints about this problem. Defendants'
18 refusals to provide a handicapped accessible restroom and toilet stall, so that these
19 facilities could properly be used by disabled persons, indicate implied malice toward
20 plaintiff and despicable conduct carried on by defendants with a willful and conscious
21 disregard for the rights and safety of plaintiff and of other disabled persons, and justify
22 exemplary damages pursuant to §3294 Civil Code, in an amount sufficient to make an
23 example of defendants and to punish defendants.

24 Wherefore plaintiff prays for damages as hereinafter set forth.
25
26
27

SIXTH CAUSE OF ACTION
VIOLATIONS OF PLAINTIFF'S CIVIL RIGHTS (§51 Civil Code)

Plaintiff repleads and incorporates by reference, as if fully set forth again herein, all of the allegations contained in the Fifth Cause of Action and incorporates them herein as if separately replied.

1

Defendants' acts and omissions have denied plaintiff full and equal accommodations, advantages, facilities, privileges and services in a business establishment as prohibited by Civil Code §51.

11

12 Each violation of the standards of Title III of the Americans With Disabilities Act of
13 1990 after January 1, 1993, as described in more detail in the paragraphs of the Fourth
14 Cause of Action herein, *infra*, which are incorporated herein into this paragraph, also
15 constitutes a violation of §51 Civil Code.
16

11

18 On information and belief, at all times relevant herein after January 1, 1993, it was
19 "readily achievable" under the standards of Title III (Public Accommodations) of the "ADA"
20 standards incorporated into the requirements of California Civil Code §51, for defendants
21 and each of them to have removed the access barriers complained of sufficiently to allow
22 full and equal enjoyment of the goods, services, facilities, and accommodations of this
23 public facility. Defendants have at all times herein mentioned been in violation of the
24 standards of §§301 and 302, 42 USC §12182 of the ADA, and in violation of California Civil
25 Code §51 which incorporates any violation of Title III of the ADA, including but not limited
26

1 to §302(b)(2)(a)(iv) and (v), and related ADA and "ADAAG" regulations, into the
2 requirements of and as a violation of California law, including Civil Code §51.

3 IV.
4

5 As a result of the violation of plaintiff's Civil Rights as hereinabove described,
6 plaintiff has suffered general damages, emotional distress and incurred reasonable
7 attorney's fees according to proof, all to his damage, and is entitled to the remedies of Civil
8 Code §§52 and 55.

9
10 SEVENTH CAUSE OF ACTION
11 INJUNCTIVE RELIEF - VIOLATION OF HEALTH &
12 SAFETY CODE §19953 and CIVIL CODE §55

13 Comes now plaintiff BLANE N. BECKWITH and for a Seventh Cause of Action
14 against defendants, and each of them, for damages for a violation of Civil Rights and for
15 injunctive relief alleges as follows:
16

17 I.
18

19 Plaintiff hereby repleads the entirety of the Fifth and Sixth Causes of Action and
20 incorporates them herein by reference as if separately replied.

21 II.
22

23 The acts and omissions of defendants as complained of herein are continuing on a
24 day by day basis to have the effect of wrongfully and wilfully excluding plaintiff and other
25 members of the public who are physically handicapped wheelchair users from full and
26 equal access to the facilities known as WALGREENS. Such acts and omissions are the
27 cause of humiliation and mental and emotional suffering of plaintiff in that these actions
28

1 continue to treat plaintiff as an inferior and second class citizen and serve to discriminate
2 against him on the sole basis that she is a person with disabilities and requires the use of a
3 wheelchair for movement in public places. So long as such acts and omissions of
4 defendants continue, plaintiff is unable to achieve equal access to and use of these
5 facilities. The acts of defendants have proximately caused and will continue to cause
6 irreparable injury to plaintiff if not enjoined by this court.

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15 Wherefore Plaintiff prays for damages as hereinafter set forth.
16

EIGHTH CAUSE OF ACTION
VIOLATION OF THE AMERICANS WITH
DISABILITIES ACT OF 1990, 42 USC §12101FF

1

20 Plaintiff hereby repleads the entirety of the Fifth, Sixth and Seventh Causes of Action
21 and incorporates them herein by reference as if separately replied.
22

11

24 Pursuant to law, in 1990 the United States Congress made findings per 42 USC
25
26 §12101 regarding physically disabled persons, finding that laws were needed to more fully

1 protect "some 43 million Americans with one or more physical or mental disabilities; that
2 historically society has tended to isolate and segregate individuals with disabilities", and
3 that "such forms of discrimination against individuals with disabilities continue to be a
4 serious and pervasive social problem; that the nation's proper goals regarding individuals
5 with disabilities are to assure equality of opportunity, full participation, independent living
6 and economic self sufficiency for such individuals; and that the continuing existence of
7 unfair and unnecessary discrimination and prejudice denies people with disabilities the
8 opportunity to compete on an equal basis and to pursue those opportunities for which our
9 free society is justifiably famous."

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III.

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12 Congress stated as its purpose in passing the Americans with Disabilities Act (42
13 USC §12101(b))

14

It is the purpose of this act
(1) to provide a clear and comprehensive national mandate for the elimination
of discrimination against individuals with disabilities; (2) to provide clear,
strong, consistent, enforceable standards addressing discrimination against
individuals with disabilities; (3) to ensure that the Federal government plays a
central role in enforcing the standards established in this act on behalf of
individuals with disabilities; and (4) to invoke the sweep of Congressional
authority, including the power to enforce the 14th Amendment and to regulate
commerce, in order to address the major areas of discrimination faced day to
day by people with disabilities.

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IV.

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As part of the Americans with Disabilities Act, Public Law 101-336, (hereinafter the
"ADA"), Congress passed "Title III - Public Accommodations and Services Operated by
Private Entities" (42 USC 12181ff). Among the public accommodations identified for
purposes of this title was "a retail and drug store."

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V.

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Pursuant to §302, 42 USC §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, (or leases to), or operates a place of public accommodation."

6

7

VI.

8

Among the specific prohibitions against discrimination were included, in §302(b)(2)(a)(iv), "A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities... where such removal is readily achievable;" and (v) "where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable." The acts of Defendants set forth herein were a violation of Plaintiff's rights under the "ADA", Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36ff.

17

18

VII.

19

The removal of each of the barriers complained of by plaintiff BLANE N. BECKWITH as hereinabove alleged were at all times since December 4, 2002 "readily achievable". On information and belief, removal of each of the barriers to access complained of herein, including access to the aisles and removal of barriers to access, were "readily achievable" for defendants in light of their financial resources, and the resources of each "parent company", owner or operator, pursuant to the Americans With Disabilities Act of 1990 (ADA) and to the regulations promulgated pursuant to the ADA.

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VIII.

2 Per §301(9), 42 USC 12181, "The term 'readily achievable' means easily
3 accomplishable and able to be carried out without much difficulty or expense." Plaintiff
4 alleges that removal of each of the access barriers plaintiff has complained about
5 hereinabove would have been and continues to be "readily achievable" by the defendants
6 under the standards set forth under §301(9) of the Americans with Disabilities Act. Further,
7 (per §302(b)(2)(A)(v)), if it was not "readily achievable" for defendants to remove all such
8 barriers, Defendants have failed to make the required services available through
9 alternative methods, and such methods are readily achievable.

10

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IX.

12 Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, §308, plaintiff is
13 entitled to the remedies and procedures set forth in §204(a) of the Civil Rights Act of 1964
14 42 USC 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis of
15 disability in violation of this title or has reasonable grounds for believing that he is about to
16 be subjected to discrimination in violation of §302.

17

18
X.

19 Plaintiff has returned to defendants' WALGREENS as recently as December 4,
20 2002, and has found that the barriers to full and equal access complained of hereinabove
21 have not been remedied. Per §308(a)(1) (42 USC 12188), "Nothing in this section shall
22 require a person with a disability to engage in a futile gesture if such person has actual
23 notice that a person or organization covered by this title does not intend to comply with its
24 provisions." Pursuant to this last section, plaintiff, on information and belief, alleges that
25 defendants have continued to violate the law and deny the rights of plaintiff and of other
26 disabled persons to access this public accommodation. Pursuant to §308(a)(2), "In cases

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1 of violations of §302(b)(2)(A)(iv)... injunctive relief shall include an order to alter facilities to
2 make such facilities readily accessible to and usable by individuals with disabilities to the
3 extent required by this title."

4

5 XI.
6

7 Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act
8 of 1964, (42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement
9 the Americans with Disabilities Act of 1990. Further, plaintiff seeks attorney fees, and
litigation expenses and costs, pursuant to §505 of Title III of the ADA.

10

11 Wherefore plaintiffs KAREN CRAIG and BLANE N. BECKWITH
12
13 pray for damages as follows:

14

15

FIRST and FIFTH CAUSES OF ACTION

16

1. General and compensatory damages according to proof;
2. Special and consequential damages according to proof;
3. Punitive and exemplary damages in an amount sufficient to deter such wrongful
conduct and make an example of defendants, pursuant to §3294 Civil Code;
4. For attorney's fees pursuant to §54.3 Code of Civil Procedure and §1021.5 Code
of Civil Procedure;
5. For all costs of suit;
6. For pre-judgment interest pursuant to §3291 Civil Code;
7. Such other and further relief as the Court may deem just and proper.

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SECOND and SIXTH CAUSES OF ACTION - §51 CIVIL CODE

1. General and compensatory damages according to proof;

- 1 2. All damages as afforded by Civil Code §52 for each day on which defendants
- 2 have denied to plaintiffs full and equal accommodations, advantages, facilities, privileges
- 3 or services in any business establishment or have otherwise denied to plaintiffs equal
- 4 access for the disabled;
- 5 3. Attorney's fees pursuant to §52 Civil Code;
- 6 4. Punitive damages pursuant to §3294 Civil Code;
- 7 5. For all costs of suit;
- 8 6. Pre-judgment interest pursuant to §3291 of the Civil Code;
- 9 7. Such other and further relief as the Court may deem just and proper.

10 : THIRD CAUSE and SEVENTH CAUSE OF ACTION

- 11 1. For injunctive relief prohibiting operation of this restaurant as a public
- 12 accommodation until it provides full and equal access to handicapped persons, and
- 13 requiring that such access be immediately provided;
- 14 2. For attorney's fees pursuant to §55 Civil Code, §19953 Health & Safety
- 15 Code, and §1021.5 Code of Civil Procedure;
- 16 3. For all costs of suit;
- 17 4. For such other and further relief as the court may deem proper.

18 : FOURTH CAUSE and EIGHTH CAUSES OF ACTION

- 19 1. For injunctive relief ordering defendants to alter the facilities to make such
- 20 facilities accessible to and usable by individuals with disabilities, per §308 of Title III of the
- 21 ADA;
- 22 2. For attorney's fees and costs of suit, per §505 of Title III of the Americans
- 23 With Disabilities Act of 1990;

24

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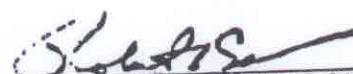
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4 3. For such other and further relief as the court may deem proper.

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DATED: December 31, 2002

LAW OFFICE OF ROBERT G. SCHOCK



ROBERT G. SCHOCK
Attorney for Plaintiffs KAREN CRAIG &
BLANE N. BECKWITH

EXHIBIT B

COPY

1 SEYFARTH SHAW
2 Kari Erickson Levine (State Bar No.: 146101)
3 Mark J. Fumia (State Bar No.: 217440)
4 101 California Street, Suite 2900
5 San Francisco, California 94111-5858
6 Telephone: (415) 397-2823
7 Facsimile: (415) 397-8549
8
9 Attorneys for Defendant
10 WALGREEN CO.

11 ENDORSED
12 FILED
13 ALAMEDA COUNTY

14 FEB 07 2003

15 CLERK OF THE SUPERIOR COURT
16 By Shantai R. Vinuya, Deputy

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF ALAMEDA

19 KAREN CRAIG and BLANE BECKWITH) Case No. 2002077454
20 Plaintiffs,)
21 v.) DEFENDANT WALGREEN CO.'S
22 WALGREEN CO., and DOES 1-50, inclusive) ANSWER TO PLAINTIFFS'
23 Defendants.) UNVERIFIED COMPLAINT

24 Pursuant to the provisions of section 431.30(d) of the California Code of Civil Procedure,
25 Defendant WALGREEN CO. ("Defendant") generally denies each and every allegation in
26 Plaintiffs KAREN CRAIG and BLANE BECKWITH's (hereinafter collectively referred to as
27 "Plaintiffs") unverified Complaint ("the Complaint").

28 In further answer to the Complaint, Defendant denies that Plaintiffs suffered injuries as
29 alleged in the Complaint or damages in any nature whatsoever.

30 FIRST AFFIRMATIVE DEFENSE

31 (Failure to State Claim for Relief — all causes of action)

32 On information and belief, the Complaint fails to state a claim upon which relief may be
33 granted against Defendant.

34 ///
35 ///

36 EXHIBIT B

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations — all causes of action)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred to the extent that they exceed the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

(Good Cause — all causes of action)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred because Defendant had good cause for its conduct. .

FOURTH AFFIRMATIVE DEFENSE

(Conduct of others and Plaintiff)

On information and belief, the proximate cause of damages suffered by Plaintiffs, if any, was the conduct of Plaintiffs or others for which Defendant was not, and is not, responsible.

FIFTH AFFIRMATIVE DEFENSE

(Accommodations Not Required By Law)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred because the accommodations sought by Plaintiffs are not required by law.

SIXTH AFFIRMATIVE DEFENSE

(Compliance with Law)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred because Defendant is in compliance with the applicable law.

SEVENTH AFFIRMATIVE DEFENSE

(Damages Not Recoverable)

On information and belief, Plaintiffs may not recover compensatory or punitive damages as a matter of law.

III

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III

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EIGHTH AFFIRMATIVE DEFENSE

(Construction, Alteration, Repair or Modification Beyond Requirements of Law)

On information and belief, the Complaint seeks accommodations and modifications that would require the construction, alteration, repair, structural or otherwise, or modification that is beyond the requirements of the law.

NINTH AFFIRMATIVE DEFENSE

(Good Faith)

On information and belief, Defendant had good faith defenses, based in law and/or fact, at all times relevant to the Complaint, which, if successful, would preclude any recovery by Plaintiff based on the allegations of the Complaint.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

On information and belief, Plaintiffs have failed to mitigate their purported damages, if any, and further, to the extent that any damages could have been mitigated, such sums should be deducted from any award of damages.

ELEVENTH AFFIRMATIVE DEFENSE

(Abatement, Apportionment or Reduction of Damages)

On information and belief, Defendant is entitled to obtain an abatement, apportionment or reduction of the damages suffered by Plaintiffs, if any, to the extent that any other party's actions caused or contributed to such damages, if any there were.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Standing)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred in that Plaintiffs lack standing and/or capacity to bring each claim.

THIRTEENTH AFFIRMATIVE DEFENSE

(Waiver)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred by the doctrine of waiver.

FOURTEENTH AFFIRMATIVE DEFENSE

(Doctrine of Estoppel)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred by the doctrine of estoppel.

FIFTEENTH AFFIRMATIVE DEFENSE

(Doctrine of Unclean Hands)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred by the doctrine of unclean hands.

SIXTEENTH AFFIRMATIVE DEFENSE

(Doctrine of Laches)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is barred by the doctrine of laches.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Preemption by Federal Law)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint is based on California state laws that are preempted by applicable Federal law.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Seek Accommodation)

On information and belief, Defendant is not liable because Plaintiffs failed to seek any accommodation.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure to Give Notice and Provide Opportunity)

On information and belief, each of Plaintiffs' claims as set forth in the Complaint fails as a matter of law because, to the extent that Plaintiffs were not provided with full and equal accommodations, advantages, facilities, privileges or services of Defendant's facility, it was because Plaintiffs failed to give Defendant sufficient notice of the need and sufficient opportunity to do so.

11

TWENTIETH AFFIRMATIVE DEFENSE

(Dual Liability Unavailable)

According to California Civil Code section 54.3, Defendant may not be held liable for damages suffered by Plaintiffs, if any there were, pursuant to both the Unruh Act and the Public Accommodations Act.

TWENTY FIRST AFFIRMATIVE DEFENSE

(Punitive Damages Unavailable)

8 Defendant alleges that Plaintiffs' Complaint and each purported cause of action asserted
9 against Defendant therein fails to set forth facts sufficient to constitute a claim for exemplary or
10 punitive damages and Plaintiffs are not entitled to recover any punitive or exemplary damages on
11 the ground that any award of punitive or exemplary damages in general and/or any such award as
12 applied to the facts of this specific action would violate Defendant's constitutional rights under
13 provisions of the United States Constitution, including, but not limited to, the due process
14 clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

TWENTY SECOND AFFIRMATIVE DEFENSE

(Accommodations Not Readily Achievable)

Defendant alleges that the accommodations requested by Plaintiffs are not readily achievable, feasible, and/or would result in an undue burden on Defendant and others.

TWENTY THIRD AFFIRMATIVE DEFENSE

(Access Not Intentionally Impeded or Impaired)

Defendant alleges that it did not intentionally impede or impair access or service to Plaintiffs.

TWENTY FOURTH AFFIRMATIVE DEFENSE

(No Entitlement to Attorneys' Fees)

Defendant alleges that Plaintiffs are not entitled to recover any attorneys' fees under the ADA or state law on the ground that Defendant was already taking measures to remedy the sought after relief prior to the lawsuit.

TWENTY FIFTH AFFIRMATIVE DEFENSE

(Good Faith Efforts)

Defendant alleges that it did not intentionally impede or impair access or service to Plaintiffs and has made good faith efforts to provide access to and in its facility.

WHEREFORE Defendant WALGREEN CO. prays:

1. That Plaintiff's Complaint be dismissed;
2. That Plaintiff take nothing by reason thereof;
3. That judgment be entered in favor of Defendant;
4. That Defendant be awarded its attorneys' fees and costs of suit; and
5. For such other and further relief as the Court deems just and proper.

DATED: February 6, 2003

SEYFARTH SHAW

By

Kari Erickson Levine
Attorney for Defendant
WALGREEN CO.

1
2 STATE OF CALIFORNIA
3 COUNTY OF SAN
4 FRANCISCO

PROOF OF SERVICE

)
ss

5 I, Jean Moore, am a resident of the State of California, over the age of eighteen years, and
6 not a party to the within action. My business address is Seyfarth Shaw, 101 California Street,
7 Suite 2900, San Francisco, California 94111-5858. On February 7, 2003, I served the within
document:

8 **DEFENDANT WALGREEN CO.'S ANSWER TO PLAINTIFFS' UNVERIFIED
9 COMPLAINT.**

10 I sent such document from facsimile machine (415) 397-8549 on _____. I certify
11 that said transmission was completed and that all pages were received and that a report
12 was generated by facsimile machine (415) 397-8549 which confirms said transmission
13 and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by
14 placing a true copy thereof enclosed in sealed envelope(s) addressed to the parties
15 listed below.

16 by placing the document(s) listed above in a sealed envelope with postage thereon
17 fully prepaid, in the United States mail at San Francisco, California addressed as set
18 forth below. I am readily familiar with the firm's practice of collection and
19 processing correspondence for mailing. Under that practice it would be deposited
20 with the U.S. Postal Service on that same day with postage thereon fully prepaid in the
21 ordinary course of business. I am aware that on motion of the party served, service is
22 presumed invalid if postal cancellation date or postage meter date is more than on day
23 after the date of deposit for mailing in affidavit.

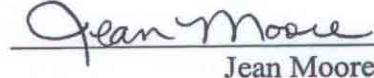
24 by placing the document(s) listed above, together with an unsigned copy of this
25 declaration, in a sealed Federal Express envelope with postage paid on account and
deposited with Federal Express at San Francisco, California, addressed as set forth
below.

26 by personally delivering the document(s) listed above to the person(s) at the
27 address(es) set forth below

28 Robert G. Schock, Esq.
Law Office of Robert G. Schock
1970 Broadway, Ste 1200
Oakland, CA 94612

29 I declare that I am employed in the office of a member of the bar of this Court whose
30 direction the service was made.

31 Executed on February 7, 2003 at San Francisco, California.

32 
33 Jean Moore

1 SEYFARTH SHAW
 2 Kari Erickson Levine (SBN: 146101)
 3 Theresa Mak (SBN: 211435)
 4 101 California Street, Suite 2900
 5 San Francisco, California 94111-5858
 6 Telephone: (415) 397-2823
 7 Facsimile: (415) 397-8549

8
 9 Attorneys for Defendant
 10 WALGREEN CO.

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ORIGINAL
 FILING
 FEB 10 2003
 RICHARD W. WIEKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

BZ

UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 KAREN CRAIG and BLANE N. BECKWITH) Case No. C 03 - 0580
 12 Plaintiff,) (S.C.A.C. Case No. 2002077454)
 13 v.)
 14 WALGREEN CO., and DOES 1-50, inclusive) DECLARATION OF THERESA MAK
 15 Defendant.) IN SUPPORT OF DEFENDANT
 16) WALGREEN CO'S PETITION FOR
 17) REMOVAL
 18 Date: February 10, 2003

I, THERESA MAK, hereby declares as follows:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and this Court, and am an associate in the law firm of Seyfarth Shaw, attorneys of record for Defendant WALGREEN CO ("Walgreens") in this case. I make this declaration in support of Walgreens' Removal to Federal Court.

2. I have personal knowledge of the facts stated herein and if called to testify thereto, I could and would competently do so.

3. On January 10, 2003, I spoke on the telephone with Mr. Robert G. Schock, counsel for Plaintiffs KAREN CRAIG and BLANE N. BECKWITH (collectively as "Plaintiffs"). During this telephone conversation, Mr. Schock and I agreed that this action constitutes a suit between citizens of different states and that, as alleged in Plaintiffs' Complaint, the amount in controversy exceeds the sum of \$75,000. As such, I indicated that Walgreens will

1 remove this action to the United States District Court for the Northern District of California. Mr.
2 Schock stated that Plaintiffs will not seek a remand back to the Superior Court of California.

3 4. On or about January 23, 2003, I spoke with the assistant for Mr. Schock, who
4 informed me that service of the Complaint was sent via certified mail to Walgreens' offices in
5 Illinois on January 3, 2003. As such, pursuant to Code of Civil Procedure section 415.40,
6 service of the Complaint was completed on Walgreens on January 13, 2003.

7 I declare under penalty of perjury under the laws of the State of California and the United
8 States that the foregoing is true and correct and of my own personal knowledge and belief, and
9 that this Declaration was executed on this 10th day of February 2003 at San Francisco,
10 California. 

Theresa Mak